IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4563 OF 2005

Reufs Motilal Emmanuel ... Petitioner.

V/s.

Minocher Ardesir Bajan
(since deceased) through his
legal heirs and representative
Ervad Parvez M. Bajan & Ors. ... Respondents.

Mr. Sandeep A. Bhagwat, Advocate for the Petitioner.

Mr. P.S. Dani, Advocate for Respondent No.4.

CORAM : S.A. BOBDE, J.

July 29, 2005.

P.C.:

1. The Petitioner has challenged the order of the Trial Court to frame additional issues. It appears that in the course of cross-examination of the Plaintiff, the plaintiff admitted that his father did not have an independant title. Therefore, the Petitioner applied for framing additional issues as to the Plaintiff’s right to

sue. This application is rejected.

2. Admittedly, the suit is filed by the original Plaintiff as Executor of the will of Bank. This being so, I do not say any reason why an issue that the father - the original Plaintiff had or not an independant title should be allowed to be raised as an additional issue. This is also the reason given by the Trial Court. I see no reason to interfere with the impugned order.

3. The learned Counsel for the Petitioner relied on the Judgement in Kishorelal Gupta Vs. Devilal Kalwar reported in AIR 1971 Orissa 191, where the Court held that an additional issue can be framed even after the commencement of arguments. This power is undoubtedly available to the Court but its exercise depends on the facts of each case. This is, in my view, not a fit case for the exercise of this power.

4. Petition is dismissed.

(S.A. BOBDE,J.)